

Proposed Charter for the Town of Amherst, Massachusetts

ARTICLE 1 INCORPORATION; SHORT TITLE; DEFINITIONS

SECTION 1-1: INCORPORATION

The inhabitants of the Town of Amherst, within the territorial limits established by law, shall continue to be a municipal corporation, a body corporate and politic, under the name "Town of Amherst."

SECTION 1-2: SHORT TITLE

This instrument shall be known and may be cited as the Amherst Home Rule Charter, 2005.

SECTION 1-3: DIVISION OF POWERS

The administration of the fiscal, prudential and municipal affairs of Amherst, with the government thereof, shall be vested in an executive branch consisting of a mayor, a legislative branch consisting of a town council and an administrative service headed by a town manager. Except as otherwise provided in this charter, the legislative branch shall not exercise any executive or administrative function, the executive branch shall not exercise any legislative or administrative function and the administrative service shall not exercise any legislative or executive function.

SECTION 1-4: POWERS OF THE TOWN

Subject only to express limitations on the exercise of any power or function by a municipal government in the constitution or in the general laws of the Commonwealth, it is the intention and the purpose of the voters of Amherst through the adoption of this charter to secure for themselves and for their government all of the powers it is possible to secure as fully and as completely as though each such power were specifically and individually enumerated herein.

SECTION 1-5: CONSTRUCTION

The powers of the Town of Amherst under this charter are to be construed liberally in favor of the town, and the specific mention of any particular power is not intended to limit the general powers of the town as stated in section 1-4.

SECTION 1-6: INTERGOVERNMENTAL RELATIONS

Subject only to express limitations in the constitution or general laws of the Commonwealth, Amherst may exercise any of its powers or perform any of its functions, and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the Commonwealth or any agency or political sub-division thereof, or with the United States government or any agency thereof.

SECTION 1-7: ETHICAL STANDARDS

Elected and appointed officers and employees of the Town of Amherst are expected to demonstrate, by their example, in their general conduct and in the performance of their duties and responsibilities, the highest ethical standards, to the end that the public may justifiably have trust and confidence in the integrity of its government. Elected and appointed officers and employees of the Town of Amherst are expected to recognize that they act always as agents for the public, that they hold their offices or positions for the benefit of the public, that the public interest is their primary concern, and that they are expected to faithfully discharge the duties of their offices regardless of personal considerations. Elected and appointed officers and employees of the Town of Amherst shall not use their official positions to secure or to grant special consideration, treatment, advantage, privilege or exemption to themselves or to any other person beyond that which is available to every other person.

SECTION 1-8: REPRESENTATION AND DIVERSITY

The voters of Amherst are cognizant of and support federal and state laws, which provide for non-discrimination and openness in appointment and hiring practices. In recognition of these statutes, and in support of them, it is expected that the mayor, the town manager and other appointing authorities will, when selecting persons to be appointed to offices or positions of the town, make a good faith effort to assure that the interest of every citizen, in every section of the town, is considered, to the end that the town government will reflect the diversity of the entire community of Amherst.

SECTION 1-9: DEFINITIONS

Unless another meaning is clearly apparent from the manner in which the word or phrase is used, the following words and phrases as used in this charter shall have the following meanings:

- (a) **Active Voters** – the words "active voters" shall mean the voters whose names are contained in the annual register of voters prepared by the registrars of voters in accordance with the provisions of section thirty-seven of chapter fifty-one and not including the voters who are listed in the inactive list as provided in section thirty-seven A of chapter fifty-one.
- (b) **Charter** - The word "charter" shall mean this charter and includes any amendment to it hereafter adopted.

- (c) **Emergency** - The word "emergency" shall mean a sudden, unexpected, unforeseen happening, occurrence or condition which necessitates immediate action or response.
- (d) **Full Council, Full Multiple Member Body** - The words "full council" or "full multiple member body" shall mean the entire authorized complement of the town council, school committee or other multiple member body notwithstanding any vacancy which might exist.
- (e) **general laws** - The words "general laws" (all lower case letters) shall mean laws enacted by the state legislature which apply alike to all cities and towns, to all cities, or to a class of two or more cities, or cities and towns of which Amherst is a member.
- (f) **General Laws** - The words "General Laws" (initial letter of each word in upper case letters) shall mean the General Laws of the Commonwealth of Massachusetts, a codification and revision of statutes enacted on December 22, 1920, and including all amendments thereto subsequently adopted.
- (g) **Initiative Measure** - The words "initiative measure" shall mean a measure proposed by voters through the initiative process provided under this charter.
- (h) **Local Newspaper** - The words "local newspaper" shall mean a newspaper of general circulation within Amherst, with either a weekly or daily circulation.
- (i) **Majority Vote** - The words "majority vote" when used in connection with a meeting of a multiple member body shall mean a majority of those present and voting, unless another provision is made by ordinance, by law, or by its own rules.
- (j) **Measure** - The word "measure" shall mean any ordinance, order, resolution, or other vote or proceeding adopted, or which the town council might adopt.
- (k) **Multiple Member Body** - The words "multiple member body" shall mean any board, commission, committee, sub-committee or other body consisting of two or more persons whether elected, appointed or otherwise constituted, but not including the town council, school committee, or library trustees.
- (l) **Organization or Reorganization Plan** - The words "organization or reorganization plan" shall mean a plan submitted by the town manager which proposes a change in the organization of the administrative structure of the town government, or to change the way in which a municipal service, or services, are delivered. Such plan may be complex and consist of many parts, or it may be simple and brief.
- (m) **Quorum** - The word "quorum" shall mean a majority of all members of a multiple member body unless some other number is required by law or by ordinance.
- (n) **Referendum Measure** - The words "referendum measure" shall mean a measure adopted by the town council that is protested by voters under the referendum procedures of this charter.
- (o) **Town** - The word "town" shall mean the town of Amherst.
- (p) **Town Agency** - The words "town agency" shall mean any multiple member body, any department, division, or office of the town of Amherst.
- (q) **Town Bulletin Boards** - The words "town bulletin boards" shall mean the bulletin board in the town hall on which the town clerk posts official notices of meetings and upon which other official town notices are posted, and the bulletin boards at any other locations as may be designated town bulletin boards by the town council.
- (r) **Voters** - The word "voters" shall mean registered voters of the town of Amherst.

ARTICLE 2 LEGISLATIVE BRANCH

SECTION 2-1: COMPOSITION, TERM OF OFFICE

(a) **Composition** - There shall be a town council consisting of nine members which shall exercise the legislative powers of the town. Four of these members, to be known as councilors-at-large, shall be nominated and elected by and from the voters at large. Five of these members, to be known as district councilors, shall be nominated and elected by and from the voters of the five districts into which the town is divided, as provided in section 8-3.

(b) **Term of Office** - The term of office for councilors-at-large shall be for four years. At each biennial town election two councilors-at-large shall be elected to serve for a term of four years. The term of office for all district councilors shall be for four years. At alternate biennial town elections the district councilors from odd numbered and from even numbered districts shall be chosen.

The terms of office of town councilors shall begin on the first business day of January in the year following their election, and shall expire when their successors have been qualified.

(c) **Eligibility** - Any voter shall be eligible to hold the office of councilor-at-large. A district councilor shall at the time of election be a voter of the district from which elected, provided, however, if any district councilor shall during the term of office remove to another district in the town such office shall be deemed vacant and the balance of the unexpired term, if any, shall be filled in the manner provided in section 2-11. If a councilor-at-large or a district councilor removes from the

town during the term for which elected such office shall immediately be deemed vacant and filled in the manner provided in section 2-11.

SECTION 2-2: COUNCIL PRESIDENT

(a) Election and Term - As soon as practicable after the councilors-elect have been qualified following each biennial election, as provided in section 9-8, the members of the town council shall elect from among its members a council president who shall serve until a successor is chosen following the next biennial town election.

(b) Powers and Duties - The council president shall during the absence or disability of the mayor preside at all meetings of the town council, regulate its proceedings and shall decide all questions of order. The council president shall appoint all members of all committees of the town council, whether special or standing. The council president shall have the same powers to vote upon all measures coming before the town council as any other member of the town council. The council president shall perform such other duties consistent with the office as may be provided by charter, by ordinance or by other vote of the town council.

(c) Council Vice President - The members of the town council shall also elect from among its members a council vice-president who shall serve as acting president during the temporary absence or disability of the council president until a successor is chosen following the next biennial town election. The powers of an acting council president shall be limited to only those powers of the office indispensably essential to the performance of the duties of the office during the period of such temporary absence or disability and no others.

SECTION 2-3: PROHIBITIONS

(a) Holding Other Office or Position - No member of the town council shall hold any other town office, position or employment. No former member of the town council shall hold any compensated appointed office, position or employment for which a salary or other emolument is payable from the town treasury until two years following the date on which such former member's service on the town council has terminated. This provision shall not prevent a person holding an office, position or other employment under the town, who has resigned such office or employment or taken a leave of absence in order to serve as a member of the town council from returning to the same office or other position, or town employment held at the time such leave of absence commenced; provided, however, no such person shall be eligible for any other municipal position until at least two years following the termination of service as a member of the town council.

(b) Interference with Administration - Neither the town council nor any of its members shall direct or request the appointment or employment of any person, or the removal of any person, or in any manner attempt to participate in the appointment or removal of persons in that part of the administrative service of the town for which the town manager is responsible. Except for the purpose of inquiries and investigations pursuant to section 2-7, the town council and its members shall deal with the officers and employees serving under the town manager, solely through the town manager, and neither the town council nor any member of the town council shall give orders or directions to any such officer or employee, either publicly or privately.

Violations of this section shall be punished in the manner and to the extent as is provided for such conduct under sections ninety-two and one hundred and seven of chapter forty-three of the General Laws.

SECTION 2-4: COMPENSATION, EXPENSES

(a) Salary - The members of the town council shall receive such salary for their services as may from time to time be set by ordinance. No ordinance increasing the salary of town councilors shall be effective unless it shall have been adopted on or before the last day of June in the second year following a town election and it provides that such salary is to take effect upon the organization of the town government following the next municipal election. Members of the town council shall not be considered 'employees' for the purpose of chapter thirty-two B of the General Laws.

(b) Expenses - Subject to appropriation and to prior authorization, the council members shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their duties.

SECTION 2-5: GENERAL POWERS (Residuary)

Except as otherwise provided by general law or by this charter, all powers of the town shall be vested in the town council which shall provide for their exercise and for the performance of all duties and obligations imposed upon the town by law.

SECTION 2-6: EXERCISE OF POWERS; QUORUM; RULES

(a) Exercise of Powers - Except as otherwise provided by general law or by this charter, the legislative powers of the town council may be exercised in a manner determined by the town council.

(b) Quorum - The presence of five members shall constitute a quorum for the transaction of business, but a smaller number may meet and adjourn from time to time. Except as otherwise provided by general law or by this charter, the affirmative vote of five members shall be required to adopt any ordinance or appropriation order.

(c) Rules of Procedure - The town council shall from time to time adopt rules regulating its procedures, which shall be in addition to the following:

- (i) Regular meetings of the town council shall be held at the time and place fixed by ordinance.
- (ii) Special meetings of the town council shall be held at the call of the mayor, at the call of the council president, or, on the call of any four or more members, by written notice delivered in hand or to the place of business or residence of each member and which contains a listing of the items to be acted upon. Except in case of an emergency, of which the mayor shall be judge, such notice shall be delivered at least forty-eight weekday hours in advance of the time set for such meeting. A copy of the notice to members shall, forthwith, be posted upon the town bulletin boards.
- (iii) All sessions of the town council and of every committee or sub-committee thereof, shall at all times be open to the public and to the press, unless another provision is made by law.
- (iv) An accurate account of the proceedings of the town council shall be kept, which shall include a record of each vote taken, and which shall be made available with reasonable promptness following each meeting. If requested by any member any vote shall be taken by a roll call. The minutes of any, so-called, executive session shall be made available forthwith upon the expiration of the basis on which such executive session was held.

(d) Committees - The town council shall establish such committees as it deems to be necessary or desirable to enable it to study and evaluate the matters which come before the town council. In establishing committees the town council may provide that at least some of the members of at least some of its committees need not be members of the town council.

SECTION 2-7: ACCESS TO INFORMATION

(a) In General - The town council may make investigations into the affairs of the town and into the conduct and performance of any town agency and for this purpose may subpoena witnesses, administer oaths and require the production of evidence.

(b) Town Officers, Members of Town Agencies, Employees - The town council may require the town manager or any member of a town agency or town employee who is not responsible to the town manager to appear before it to give such information as the town council may require in relation to the municipal services, functions, powers, or duties which are within the scope of responsibility of such person and within the jurisdiction of the town council.

(c) Mayor and Town Manager - The town council may require the mayor or the town manager to provide specific information to it on any matter within the jurisdiction of the town council and under the supervision of the mayor or the town manager. The town council may require the mayor or the town manager to appear before it, in person, to respond to written questions made available to the mayor or the town manager at the time the request to attend is made to provide specific information on the conduct of any aspect of the business of the town. The town manager may bring to such meeting any assistant, department head or other town officer or employee the town manager may deem necessary to assist in responding to the questions posed by the town council.

(d) Notice - The town council shall give not fewer than five days notice to any person it may require to appear before it under the provisions of this section. The notice shall include specific questions on which the town council seeks information and no person called to appear before the town council under this section shall be required to respond to any question not relevant or related to those presented in advance and in writing. Notice shall be by delivery in hand, or by registered or certified mail to the last known place of residence of any such person.

SECTION 2-8: OFFICERS ELECTED BY TOWN COUNCIL

(a) Clerk of the Council - The town council shall elect a clerk of the council to serve for a term of two years and until a successor is chosen and qualified. The clerk of the council shall give notice of its meetings to its members and to the public, keep the journal of its proceedings and perform such other duties as may be provided by ordinance or by other vote of the town council.

(b) Other Council Employees - The town council may employ other persons within the funds available to it to assist it in carrying out its responsibilities. The council may employ attorneys under this section for the purpose of receiving advice and assistance in the preparation and review of legislation, and for no other purpose.

(c) Salaries/Compensation - The officers selected by the town council shall receive such salaries or other compensation as may from time to time be provided for such office, by ordinance.

(d) Removal/Suspension - Any person selected by the town council may be removed or suspended by the town council by the use of procedures substantially the same as those contained in the personnel ordinance for the removal or suspension of other town employees.

SECTION 2-9: ORDINANCES AND OTHER MEASURES

(a) Emergency Ordinances - No ordinance shall be passed finally on the date it is introduced, except in case of emergency involving the health or safety of the people or their property.

No ordinance shall be regarded as an emergency ordinance unless the emergency is defined and declared in a preamble to such ordinance, separately voted upon and receiving the affirmative vote of seven or more members of the town council.

Emergency ordinances shall stand repealed on the sixty-first day following their adoption, unless an earlier date is specified in the measure, or unless a second emergency measure adopted in conformity with this section is passed extending it, or unless a measure passed in conformity with the procedures for measures generally has been passed extending it.

(b) Measures, In General - The town council may pass a measure through all of its stages at any one meeting, except proposed ordinances, appropriation orders and loan authorizations, provided that no member of the town council shall object; but, if a single member objects, a vote on the measure shall be postponed to the next meeting of the town council.

On the first occasion that the question of adopting any measure is put to the town council, except an emergency measure as defined in section 2-9(a), if a single member objects to the taking of a vote, the vote shall be postponed until the next meeting of the town council, regular or special. This procedure shall not be used more than once for any measure notwithstanding any amendments made to the original measure.

(c) Publication - Every proposed ordinance, appropriation order or loan authorization, except emergency ordinances as provided in section 2-9(a), shall be published once in full in a local newspaper, and in any additional manner as may be provided by ordinance, at least seven days before its final passage. After final passage it shall be posted on the town bulletin board and otherwise published as may be required by ordinance. Provided, however, that whenever a proposed ordinance or codification of ordinances or other measure would exceed in length more than ten column inches of ordinary newspaper notice print, then in lieu of publication in a local newspaper, the same may be published and made available at the office of the town clerk, and if so published and made available at least ten days before its final passage this shall be deemed sufficient notice. Whenever the town council provides for publication in this manner, in lieu of the newspaper publication, it shall, at least seven days before final passage publish in a local newspaper a general summary of the proposed ordinance, appropriation order or loan authorization, and a notice stating the times and places at which copies of the proposed ordinance, appropriation order or loan authorization may be obtained by the public.

SECTION 2-10: COUNCIL REVIEW OF CERTAIN APPOINTMENTS

(a) Policy-Making Multiple Member Bodies - The mayor shall submit to the town council the name of each person the mayor desires to appoint as a member of one of the policy making multiple-member bodies which are enumerated in section 3-3. The town council shall investigate each such candidate for appointment and may require any person whose name has been referred to it to appear before the town council, or a committee thereof, to give such information relevant to such appointment as the committee, or the town council, may require.

Appointments made by the mayor to the policy making multiple member bodies enumerated in section 3-3 shall become effective if approved by a vote of five or more members of the town council.

(b) Non-Policy-Making (Advisory) Multiple Member Bodies - The mayor shall submit to the town council the name of each person the mayor desires to appoint as a member of any advisory multiple-member body which the mayor is authorized to appoint. The town council shall investigate each such candidate for appointment and may require any person whose name has been referred to it to appear before the town council, or a committee thereof, to give such information relevant to such appointment as the committee, or the town council, may require.

Appointments made by the mayor to advisory multiple member bodies shall become effective on the thirtieth day following the date on which notice of the proposed appointment was filed with the clerk of the council, unless six members of the town council shall within the said thirty days vote to reject such appointment, or unless the town council has sooner voted to affirm the appointment. Rejection by the town council shall require a two-thirds vote of the full council (six members so voting). The question on rejection of any appointment made by the mayor shall not be subject to the procedure of charter objection provided in section 2-9 (b) of this charter.

SECTION 2-11: FILLING OF VACANCIES

(a) Councilor-at-Large - If a vacancy shall occur in the office of councilor-at-large during the first twenty months of the term for which councilors are elected the vacancy shall be filled in descending order of votes received by the candidate for the office of councilor-at-large at the preceding town election who received the largest number of votes without being elected, provided such person remains eligible and willing to serve and provided such person received votes at least equal to thirty percent of the vote total received by the person receiving the largest number of votes for the office of councilor-at-large at the said election. The town clerk shall certify such candidate to the office of councilor-at-large to serve until the next biennial town election at which time a candidate shall be elected who shall serve for the balance of the then unexpired term.

If a vacancy shall occur in the office of councilor-at-large after the twentieth month of the term for which councilors are elected the vacancy shall be filled in descending order of votes received by the candidate for the office of councilor-at-large at the town election held in the twenty-third month of the term who received the largest number of votes without being elected, provided such person remains eligible and willing to serve and provided such person received votes at least equal to thirty percent of the vote total received by the person receiving the largest number of votes for the office of councilor-at-large at the said election. The town clerk shall certify such candidate to the office of councilor-at-large to serve for the balance of the then unexpired term.

If a vacancy shall occur in the office of councilor-at-large during the last six months of the term for which councilors-at-large are elected, such vacancy shall be filled by the person at the biennial town election who receives the highest number of votes for the office of councilor-at-large and who is not then serving as a member of the town council. Such person shall forthwith be certified and shall serve for the last two months of the concluding term in addition to the term for which such person was elected.

(b) District Councilor - If a vacancy shall occur in the office of district councilor it shall be filled in the same manner as provided in section 2-11(a) for the office of councilor-at-large except that the list shall be of the candidates for the office of district councilor in the district in which the vacancy occurs, provided however, if there be no candidate on such list who remains eligible and willing to serve the next highest ranking candidate from among the candidates for election to the council at large who is a resident of the district in which the vacancy exists shall be certified and shall serve until the next regular election provided such candidate remains a resident of the district, is willing to serve as a district councilor and received votes in the district at least equal to thirty percent of the vote total received by the person receiving the largest number of votes for the office of district councilor at the said election. The town clerk shall certify such candidate to the office of district councilor to serve for the balance of the then unexpired term.

(c) Filling of Vacancies By Town Council and School Committee - Whenever a vacancy shall occur in the office of town councilor and there is no available candidate to fill such vacancy in the manner provided in section 2-11 (a) or (b) the vacancy shall be filled by a majority vote of a joint convention of the remaining members of the town council and the members of the school committee. Persons elected to fill a vacancy by a joint convention of the town council and the school committee shall serve only until the next regular election at which time the vacancy shall be filled by the person at the biennial town election who receives the highest number of votes for the office and who is not then serving as a member of the town council, provided, however, that if the person chosen by convention to fill the vacancy is elected at such election such person shall continue to serve for the balance of the term. Such candidate shall forthwith be sworn and shall serve for the remainder of the unexpired term in addition to the term for which elected. Persons serving as town councilors or school committee members under this section shall not be entitled to have the words "candidate for re-election" printed against their names on the election ballot.

ARTICLE 3 EXECUTIVE BRANCH

SECTION 3-1: MAYOR: QUALIFICATIONS; TERM OF OFFICE; COMPENSATION

(a) Mayor, Qualifications -- The chief executive officer of the town shall be a mayor, elected by and from the voters of the town at large. Any voter shall be eligible to hold the office of mayor.

(b) Term of Office - The term of office of the mayor shall be two years beginning on the first business day of January following the biennial town election at which chosen and until a successor is qualified.

(c) Compensation - The town council shall, by ordinance, establish an annual salary for the mayor. No ordinance altering the salary of the mayor shall be effective unless it shall have been adopted on or before the last day in June in the year in which municipal elections are held and it provides that such salary is to become effective in January of the year following the next biennial town election.

(d) Expenses - Subject to appropriation, the mayor shall be entitled to reimbursement of the actual and necessary expenses incurred in the performance of the duties of the office.

(e) Prohibitions - The mayor shall hold no other town office or town employment. No former mayor shall hold any compensated appointed town office or town employment until two years following the date on which such former mayor's town service has terminated. This provision shall not prevent a person holding an office, position or other employment under the town, who has resigned such office or employment or taken a leave of absence in order to serve as mayor from returning to the same office or other position, or town employment held at the time such leave of absence commenced; provided, however, no such person shall be eligible for any other municipal position until at least two years following the termination of service as mayor.

SECTION 3-2: EXECUTIVE POWERS

The executive powers of the town shall be vested in the mayor. The mayor shall cause the charter, the laws, the ordinances and other orders for the government of the town to be enforced, and shall cause a record of all official acts of the executive branch of the town government to be kept.

The mayor shall exercise a general supervision over the policy direction of all town agencies, unless otherwise provided by law, by the charter or by ordinance, but the mayor shall have no direct administrative duties or responsibilities. It is expressly recognized that the direction of the administration of all town agencies is the sole responsibility of the town manager. To assist the mayor in policy formulation and implementation the town manager shall furnish to the mayor, forthwith upon request, any information, materials or otherwise as the mayor may request and as the needs of the office of mayor and the interest of the town may require.

The mayor shall, when present, preside at the meetings of the town council, regulate its proceedings and decide all questions of order, provided, however, the mayor shall not preside, regulate the proceedings and decide questions of order on any occasion when the town council is considering what action it will take in connection with any appointment submitted by the mayor, or when the town council is considering what action it will take in connection with a veto message submitted by the mayor. The Mayor shall set the council agenda.

The mayor shall, by virtue of the office, be a member of the school committee and a member of the board of trustees of the town library and shall be entitled, when present, to speak and to otherwise participate in the meeting of either body, but shall have no right to vote on any matter coming before either body.

The town manager shall ensure that the mayor is kept fully informed of and fully involved in the town's emergency preparedness planning and preparation. In time of public danger or emergency, as determined by the town council, the mayor may, with its consent, temporarily exercise the town council's supervisory powers over the town manager, but such delegation shall not exceed seven days unless the town council shall vote to extend such temporary powers not to exceed another seven days. The town council may extend the period of delegation by successive extensions of not more than seven days each.

The mayor shall be recognized as the official head of the town for all ceremonial purposes and shall be recognized by the courts for the purpose of serving civil process and by the governor for military purposes.

The mayor shall represent the town in its relations with other units of government.

The mayor shall present an annual state of the town message to the town council setting out proposed policies to be adopted by the town council which, in the opinion of the mayor, address the problems and opportunities of the town.

The mayor shall, from time to time throughout the year, by written communications, recommend to the town council for its consideration such measures as, in the judgment of the mayor, the needs of the town require.

The mayor shall be responsible for coordinating the town manager, the trustees of the public library and the school committee in the budget making process, and for the presentation of an annual operating budget message to the town council which makes specific recommendations to the town council for its consideration in adopting the annual operating budget, as provided in article 6.

The mayor shall be the primary interface between the elected officers of the town and the administrative service of the town and shall by close and frequent consultation with the town manager provide input and reaction from the elected officers to the appointed administrators and from the appointed administrators to the elected officers.

SECTION 3-3: APPOINTMENTS BY THE MAYOR

The mayor shall appoint, subject to the approval of such appointments by the town council as provided in section 2-10, members of the planning board, conservation commission, historical commission, board of appeals (under the zoning ordinance), licensing board and board of health.

SECTION 3-4: COMMUNICATIONS; SPECIAL MEETINGS

(a) Communications to the Town Council - Within twelve weeks following the start of each fiscal year the mayor, working in conjunction with the town manager, shall submit to the town council, and make available for public distribution, a complete report on the financial and administrative activities of the town for the preceding fiscal year.

(b) Special Meetings of the Town Council - The mayor may at any time call a special meeting of the town council, for any purpose, by causing a notice of such meeting to be delivered in hand or to the place of business or residence of each member of the town council. Such notice shall, except in an emergency of which the mayor shall be the sole judge, be delivered at least forty-eight weekday hours in advance of the time set and shall specify the purpose or purposes for which the meeting is to be held. A copy of each such notice shall, forthwith, be posted on the town bulletin board.

SECTION 3-5 APPROVAL OF MAYOR, EXCEPTION (VETO)

Every order, ordinance, resolution or vote adopted or passed by the town council relative to the affairs of the town, except memorial resolutions, the selection of town officers by the town council, the council's evaluation of the town manager, and any matters relating to the internal affairs of the town council, shall be presented to the mayor for approval. If the mayor approves of the measure the mayor shall sign it; if the mayor disapproves of the measure, the mayor shall return the measure, with the specific reason or reasons for such disapproval attached thereto, in writing, to the town council. The mayor may disapprove or reduce items or parts of items and thus exercise a selective veto power. The town council shall enter the objections of the mayor on its records, and not sooner than ten days, nor after thirty days from the date of its return to the town council, shall again consider the same measure. If the town council, notwithstanding such disapproval by the mayor, shall again pass the order, ordinance, resolution or vote by a two-thirds vote of the full council, (at least six members so voting) it shall then be deemed in force, notwithstanding the failure of the mayor to approve the same. If the mayor has neither signed a measure nor returned it to the town council within ten days following the date it was presented to the mayor, the measure shall be deemed approved and in force.

SECTION 3-6 TEMPORARY ABSENCE OF THE MAYOR

(a) Acting Mayor - Whenever, by reason of sickness, absence from the town or other cause, the mayor shall be unable to perform the duties of the office for a period of more than ten successive working days or more, the president of the town council shall be the acting mayor. In the event of the absence or disability of the president of the town council, the vice-president of the town council shall serve as acting mayor.

The mayor shall, by a letter filed with the town council and a copy filed with the town clerk, designate a qualified elected or appointed town official to serve as acting mayor during the temporary absence of the mayor for periods of ten days or less and to serve only when the needs of the town require and only to the extent necessary under the then circumstances. Neither the town manager nor any employee responsible to the town manager may serve as acting mayor.

(b) Powers of Acting Mayor - The acting mayor shall have only those powers of the mayor as are indispensably essential to the conduct of the business of the town in an orderly and efficient manner and on which action may not be delayed. The acting mayor shall have no authority to make any permanent appointment or removal from town service unless the disability of the mayor shall extend beyond sixty days nor shall an acting mayor approve or disapprove of any measure adopted by the town council unless the time within which the mayor must act would expire before the return of the mayor. During any period in which any member of the town council is serving as acting mayor, such councilor shall not vote as a member of the town council.

SECTION 3-7 DELEGATION OF AUTHORITY BY MAYOR

The mayor may authorize the town manager or any officer or employee of the town not responsible to the town manager to exercise any power or perform any function or any duty which is assigned by this charter, or otherwise, to the mayor and the mayor may rescind or revoke any such authorizations previously made, provided, however, that all acts performed under any such delegation of authority during such period of authorization shall be and remain the acts of the mayor. Nothing in this section shall be construed to authorize a mayor to delegate the power of appointment to town office or employment or to sign or return measures approved by the town council.

SECTION 3-8 VACANCY IN OFFICE OF MAYOR

(a) Special Election - If a vacancy in the office of mayor occurs during the first year of the term for which the mayor is elected, whether by reason of death, resignation, removal from office, incapacity or otherwise the town council shall

forthwith order a special election, to be held within ninety days following the date the vacancy is created, to fill such vacancy for the balance of the then expired term.

(b) Council Election - If a vacancy in the office of mayor occurs in the second year of the term for which the mayor is elected, whether by reason of death, resignation, removal from office, or otherwise, the president of the town council shall become the mayor. Upon the qualification of the president of the town council as the mayor, under this section, a vacancy shall exist in that council seat on the town council which shall be filled in the manner provided in section 2-11. If the council president shall for any reason decline to serve as acting mayor the town council shall, forthwith, by majority vote, select a mayor from among its members.

(c) Powers, Term of Office - The mayor elected under Section 3-8(a) or (b) shall have all the powers of the mayor. A person elected pursuant to subsection (a), above, shall serve for the balance of the term unexpired at the time of election to the office. A person chosen pursuant to subsection (b), above, shall serve until the time of the next regular election at which time the person elected to fill the office for the ensuing term of office shall serve, in addition, for the balance of the then unexpired term.

ARTICLE 4 TOWN MANAGER

SECTION 4-1: APPOINTMENT; QUALIFICATION; TERM

The town council shall appoint a town manager to serve for an indefinite term and shall fix the compensation for such person, annually, within the amount appropriated by the town council. The appointment of the town manager shall be made by a vote of five or more members of the town council to confirm the nomination of a town manager made by the mayor. The town manager shall be a person especially fitted by education, training and previous experience in public administration to perform the duties of the office. The town manager shall be appointed solely on the basis of demonstrated executive and administrative qualifications without regard to political affiliation and in accordance with state and federal anti-discrimination laws and regulations.

A town manager need not be a resident of the town or of the commonwealth at the time of appointment, but, unless the town council shall, by a majority of its members vote to extend such time or waive such requirement, a residence in Amherst must be established within six months following the date of appointment; failure to establish such residence shall be deemed to be a resignation from the office of town manager.

The town manager shall not have served as the mayor or as a member of the town council for at least twelve months prior to appointment. The town council may from time to time establish, by ordinance, such additional qualifications as seem necessary and appropriate.

The town manager shall devote full time to the office and shall not hold any other public office, elective or appointive, nor actively engage in any other business or occupation during such service, unless such action is approved in advance and in writing by the mayor and the town council. This restriction does not exclude the town manager's participation in related professional organizations.

The mayor shall initiate and lead the town council in an annual review of the job performance of the town manager for the purpose of assessing the strengths and weaknesses of the town manager's performance. The review shall be based on a written list of performance criteria developed by the mayor and the town council. Copies of the criteria, with an invitation to submit written comments, shall be available to the public at the office of the mayor and at the town council's office. The mayor shall submit an evaluation statement to the council. After due consideration the town council shall adopt a written report of its evaluation. The report shall be placed in the town manager's personnel file and a written summary shall be released to the public.

SECTION 4-2: POWERS AND DUTIES

The town manager shall be the chief administrative officer of the town, directly responsible to the mayor and town council for the administration of all town affairs for which the office of town manager is given responsibility by or under this charter. The powers and duties of the town manager shall include the following:

(a) To supervise, direct and be responsible for the efficient administration of all functions and activities for which the office of town manager is given authority, responsibility or control by this charter, by ordinance, by vote of the town council, or otherwise.

(b) To appoint, and in appropriate circumstances to remove, subject to the provisions of the civil service law and of any collective bargaining agreements as may be applicable, all department heads, officers, members of boards and commissions

and employees for whom no other method of selection is provided by this charter or by ordinance, except employees of the school department and town library. All appointments and removal of personnel shall be subject to the provisions of state and federal anti-discrimination laws, collective bargaining agreements, the limitations of existing appropriations and the town's personnel policies. Notice of all appointments made by the town manager shall be filed with the town council, and copies of the notices of all such appointments shall be posted on the town bulletin board when submitted to the town council.

(c) To be entrusted with the administration of a town personnel system, including, but not limited to, personnel policies and practices, rules and regulations, including provisions for an annual employee performance review and collective bargaining agreements entered into by the town. The town manager shall also prepare and keep current a plan establishing the job classification and staffing requirements for each town agency, except the school department.

(d) To attend all regular and special meetings of the town council, unless unavailable for reasonable cause, and to have a voice, but no vote, in all of its proceedings.

(e) To assure that full and complete records of the financial and administrative activities of the town are kept and to render as often as may be required by the town council, but not less than once in each year, a full report of all town administrative operations during the period reported on, which report shall be made available to the public.

(f) To keep the town council fully advised as to the needs of the town and to recommend to the mayor and to the town council and to other town officers and agencies for adoption such measures requiring action by them or by the town council as the town manager may consider to be necessary or expedient.

(g) To have full jurisdiction over the use of all town facilities and property except property under the control of the school committee or the board of library trustees. The town manager shall be responsible for the preparation of plans and the supervision of work on existing buildings or on the construction of new buildings other than school buildings and buildings under the control of the library trustees. The town manager may maintain and repair school buildings if and to the extent that the school committee requests, and the town manager may maintain and repair buildings under the control of the library trustees if and to the extent that they so request.

(h) To assist in the preparation, in the manner provided in Article 6, of an annual operating budget for the town and a proposed capital outlay program for the five fiscal years next ensuing.

(i) To assure that a full and complete inventory of all property of the town, both real and personal, is kept, including all property under the jurisdiction of the school committee and the library trustees.

(j) To negotiate, or cause to be negotiated, all contracts involving any subject within the jurisdiction of the office of town manager. All such contracts shall be subject to funding by the town council.

(k) To be the chief procurement officer for the town, as provided in chapter thirty B of the General Laws, responsible for the procurement of all supplies, material and equipment for all departments and activities of the town except the schools and the town library unless, and to the extent that, the school committee or the trustees of the town library may request by signed requisition.

(l) To see that all of the provisions of the general laws, of this charter, town ordinances and other votes of the town council, and votes of the town council which require enforcement by the town manager or officers subject to the direction and supervision of the town manager are faithfully executed, performed or otherwise carried out.

(m) To inquire, at any time, into the conduct of office or performance of duties of any officer or employee, department, board, commission or other town agency under the control of the town manager, or any other officer, employee, department, board, commission or other town agency when directed so to do by the town council.

(n) To answer all questions of the town council which relate to matters over which the town manager exercises any supervision.

(o) To coordinate the activities of all town agencies serving under the office of town manager with those under the control of other officers and multiple member bodies elected directly by the voters.

(p) The town manager shall have authority to prosecute, defend and compromise all litigation to which the town is a party and to employ special counsel whenever in the judgment of the town manager, after consultation with the town's attorney, such employment is deemed to be advisable. The town manager shall keep the mayor and the town council informed of the status of the town's legal affairs and all litigation to which the town is a party.

(q) To perform any other duties as are required to be performed by the town manager by ordinances, administrative code, votes of the town council, or otherwise.

SECTION 4-3: DELEGATION OF AUTHORITY

The town manager may authorize any subordinate officer or employee to exercise any power or perform any function or duty which is assigned to the office of town manager, provided, however, that all acts performed under any such delegation shall at all times be deemed to be the acts of the town manager.

SECTION 4-4: ACTING TOWN MANAGER

(a) **Temporary Absence** - By letter filed with the town clerk, the town manager shall designate a qualified town administrative officer or employee to exercise the powers and perform the duties of town manager during a temporary absence. During a temporary absence the mayor and the town council may not revoke such designation until at least ten successive working days have elapsed, whereupon the town council may, upon the recommendation of the mayor appoint another qualified town administrative officer or employee to serve until the town manager shall return. If no such letter is on file with the town clerk, or if the person designated in such letter is, for any reason, unable to serve, the mayor, with the approval of the town council shall designate some suitable person to so serve.

(b) **Vacancy** - Any vacancy in the office of town manager shall be filled as soon as possible, but, pending such regular appointment the mayor shall appoint, subject to the approval of the town council, a qualified town administrative officer or employee to perform the duties of the office on an interim basis. Such temporary appointment may not exceed three months, but, renewals of not more than three months duration may be voted by the town council until a permanent town manager can be hired. Compensation for such person shall be set by the town council.

(c) **Powers and Duties** - The powers of a temporary or interim town manager, under (a) and (b) above, shall be limited to matters not admitting of delay and shall include authority to make temporary, emergency appointments or designations to town office or employment but shall not include authority to make any permanent appointments or designations.

SECTION 4-5: REMOVAL AND SUSPENSION

The town council may, by a majority vote of the full board, terminate and remove, or suspend, the town manager from office in accordance with the following procedure.

(a) The town council shall adopt a preliminary resolution of removal by the affirmative vote of a majority of all its members which must state the reason or reasons for removal. This preliminary resolution may suspend the town manager for a period not to exceed forty-five days. A copy of the resolution shall be delivered to the town manager forthwith.

(b) Within five days after receipt of the preliminary resolution the town manager may request a public hearing by filing a written request for such hearing with the town council. This hearing shall be held at a meeting of the town council not later than thirty days after the request is filed nor earlier than twenty days. The town manager may file a written statement responding to the reasons stated in the resolution of removal with the town council provided the same is received at its office more than forty-eight hours in advance of the public hearing.

(c) The town council may adopt a final resolution of removal, which may be made effective immediately, by the affirmative vote of a majority of all of its members, not less than ten nor more than twenty-one days following the date of delivery of a copy of the preliminary resolution to the town manager, if the town manager has not requested a public hearing; or, within ten days following the close of the public hearing if the town manager has requested one. Failure to adopt a final resolution of removal within the time periods as provided in this section shall nullify the preliminary resolution of removal and the town manager shall, at the expiration of said time, forthwith resume the duties of the office. The town manager shall continue to receive a salary until the effective date of a final resolution of removal. The action of the town council in suspending or removing the town manager shall be final, subject only to the mayor's veto under section 3-5, it being the intention of this provision to vest all authority and fix all responsibility for such suspension or removal solely in the town council.

ARTICLE 5 ADMINISTRATIVE ORGANIZATION

SECTION 5-1: ORGANIZATION OF TOWN AGENCIES

The organization of the town into operating agencies for the provision of services and the administration of the government may be accomplished only through an organization (or reorganization) plan filed by the town manager. No organization plan may originate with the town council.

The town manager may, subject only to express prohibitions in a general law, or this charter, reorganize, consolidate or abolish any town agency, in whole or in part; establish such new town agencies as the town manager deems necessary or desirable, provided, however, that no function assigned by this charter to a particular town agency may be discontinued or assigned to any other town agency unless this charter specifically so provides.

The town manager may from time to time prepare and promulgate plans of organization or reorganization that establish operating divisions for the orderly, efficient or convenient conduct of the business of the town, and when incidental to the reorganization of a department or office may transfer the appropriation from one municipal agency to another.

The town manager shall prepare and keep current, at least in graphic form, a plan of organization showing the various town offices and agencies and the relationship of each office and agency to other offices and agencies.

SECTION 5-2: MERIT PRINCIPLE

All appointments and promotions of town officers and employees shall be made on the basis of merit and fitness demonstrated by examination, past performance, or by other evidence of competence and suitability.

SECTION 5-3: LICENSING BOARD

(a) Establishment – There shall be a licensing board which shall have the powers of a licensing board appointed under section four of chapter one hundred and thirty-eight of the General Laws, the power to issue licenses for inn holders or common victuallers, be the licensing authority for the purposes of chapter one hundred and thirty-eight and chapter one hundred and forty of the General Laws and which shall have all of the other powers with respect to licenses which prior to the adoption of the home rule charter were exercised by the board of selectmen. The board of license commissioners may grant licenses relating to alcoholic beverages under chapter one hundred and thirty-eight of the General Laws and those licenses under chapter one hundred and forty of the General Laws which are not, by the provisions of said chapter, placed within the jurisdiction of another municipal officer or agency, and it shall have all the powers and duties of a licensing authority under said chapters.

(b) Composition - The licensing board shall consist of five members appointed by the mayor as provided in section 3-3 and 2-10(a). The terms office shall be for three years each so arranged that as nearly an equal a number of such terms as is possible shall expire each year.

ARTICLE 6 FINANCE AND FISCAL PROCEDURES

SECTION 6-1: FISCAL YEAR

The fiscal year of the town shall begin on the first day of July and shall end on the last day of June, unless another period is required by general law.

SECTION 6-2: FINANCIAL PROJECTIONS

Annually, on or before the first day of November, the mayor, in consultation with the town manager, shall prepare and develop long range financial projections that include actual revenues and expenditures for the preceding fiscal year, estimated revenues and expenditures for the current fiscal year, projected revenues and expenditures for at least the next three fiscal years, an identification of each factor which the mayor believes is likely to have an impact on the financial condition of the town during such period, revenue trends in state distributions and in local receipts, potential sources of new or expanded revenues, new or expanded cost items, a summary statement of the fiscal condition of the town at the end of each year during the period reported on and a recommendation for actions to be taken to minimize any adverse affects upon the town and to maximize favorable trends.

Annually, on or before the first day of November, the mayor shall distribute copies of the report described above to the town manager, the school committee, the board of trustees of the town library and the finance commission and shall convene a joint meeting of same to discuss the report.

Revenue and expenditure projections should be clearly stated and their basis explained, along with any policies related to the use, retention or accumulation of any reserves. The report shall provide the basis for the preliminary spending guidelines of the mayor for the ensuing fiscal year.

SECTION 6-3: FINANCE COMMISSION

(a) Composition, Mode of Selection – There shall be a finance commission which shall consist of seven voters appointed by the council president to serve for terms of three years each, so arranged that as nearly an equal a number of terms as is

possible shall expire each year, and of the members of the town council committee to which are referred the budget and other financial matters, as such committee shall be constituted from time to time.

(b) Citizens' Advisory Finance Committee – The seven voters appointed by the town council president shall constitute a citizens' advisory committee on finance and, as such, shall serve as a resource for the town council in all matters affecting finance. The citizens' advisory finance committee shall have such additional powers and duties as may be provided by ordinance.

(c) Powers and Duties – The finance commission shall have full and complete access to all information involving all aspects of the budget preparation process as it becomes available, including revenue forecasting, preliminary spending estimates, and the budgets as submitted to the mayor and the town council.

The finance commission shall file a report with the town council, with recommendations concerning the adoption of the annual town budget, with or without amendments, in such detail and at such time as may be provided by ordinance.

SECTION 6-4: PREPARATION OF SPENDING REQUESTS

(a) Town Manager – Annually, on or before the first day of February, the town manager shall submit to the mayor and to the chair of the school committee and to the chair of the board of library trustees a recommendation in writing of the appropriations for the town government for the ensuing fiscal year, showing specifically the amount required to meet the interest and maturing bonds and notes or other outstanding indebtedness of the town, and showing specifically the amount recommended to be provided for each fund and department, together with a statement of the expenditures of the town for the same purpose in at least the two preceding years and an estimate of the expenditures for the current year.

(b) School Committee – Annually, on or before the first day of February, the superintendent of schools shall submit to the mayor and to the chair of the school committee, the chair of the board of library trustees and the town manager a recommendation in writing of the appropriations requested for the operation of the school department for the ensuing fiscal year, showing specifically the amount recommended to be provided for each fund and account, together with a statement of the expenditures of the schools for the same purpose in at least the two preceding years and an estimate of the expenditures for the current year.

(c) Board of Library Trustees – Annually, on or before the first day of February, the library director shall submit to the mayor and to the chair of the board of library trustees, the chair of the school committee and the town manager a recommendation in writing of the appropriations requested for the operation of the library department for the ensuing fiscal year, showing specifically the amount recommended to be provided for each fund and account, together with a statement of the expenditures of the library for the same purpose in at least the two preceding years and an estimate of the expenditures for the current year.

SECTION 6-5: MAYOR'S ROLE AS COORDINATOR OF BUDGET PREPARATION

The mayor shall review the spending requests submitted by the town manager, school superintendent and library director and shall make a preliminary determination if sufficient funds are likely to be available to meet the needs as set out in the documents submitted as provided in sections 6-4, 6-12, and all other required or recommended expenditures for the ensuing year. In making such preliminary determination the mayor shall consider the use of resources of all kinds, including but not limited to property taxes, fee revenue, and the use of Free Cash or other reserves. If the mayor shall determine that an insufficient amount of money will be available to meet the spending requests contained in the budget estimates submitted as provided in section 6-4 the mayor shall forthwith advise the town manager, school committee and board of trustees of the public library of the amount of the deficiency, and shall request each to identify changes to the requests that will result in a unified, balanced budget for the town.

The mayor shall be available to meet with any municipal officer or agency that requests to meet for the purpose of advancing the budget making process and no municipal officer and no municipal agency shall refuse or make itself unavailable to meet with the mayor as the mayor seeks to find common ground and to achieve a balanced budget.

SECTION 6-6: BUDGET REQUESTS OF SCHOOL COMMITTEE AND BOARD OF LIBRARY TRUSTEES

(a) Public Hearing - At least seven days before the meeting at which the school committee or the board of library trustees is scheduled to vote on its final budget request, the school committee or the board of library trustees shall cause to be published in a local newspaper a general summary of its proposed budget. The summary shall specifically indicate any major variations from the current budget, and the reasons for such changes. It shall further indicate the times and places at which complete copies of its proposed budget are available for examination by the public, and the date, time and place, not less than seven nor more than fourteen days following such publication, when a public hearing will be held by the school committee or the board of library trustees on the proposed budget. The school committee or the board of library trustees

shall not take its final vote on its proposed budget until all persons who desire to be heard concerning the budget proposal have had an opportunity to be heard.

(b) Submission to Mayor - The budgets as adopted by the school committee and by the board of library trustees shall be submitted to the mayor at least twenty-one days before the date the mayor is required to submit a proposed town budget to the town council to allow the mayor sufficient time within which to consider the effect the school department's and library department's requested appropriations will have upon the total town operating budget the mayor is required to submit to the town council under this article.

SECTION 6-7: SUBMISSION OF BUDGET MESSAGE

On or before the first day in May, the mayor shall submit to the town council a budget message and supporting documents for the ensuing fiscal year. The mayor shall simultaneously provide for the publication in a local newspaper of a notice and a general summary of the budget message. The summary shall specifically indicate any major variations from the current operating budget and the reason for such changes. The notice shall further indicate the times and places at which complete copies of the budget message are available for examination by the public.

SECTION 6-8: BUDGET MESSAGE

The budget message of the mayor shall explain the budget for all town agencies both in fiscal terms and in terms of work programs. It shall outline proposed financial policies of the town for the ensuing fiscal year, describe important features of the budget, indicate any major variations from the current fiscal year in financial policies, expenditures and revenues together with the reasons for such changes, summarize the town's debt position and include other material as the mayor deems desirable, or as may be required by the provisions of a town ordinance. The mayor's budget message shall convey the proposed operating budgets submitted by the town manager, the school committee, and the board of library trustees, and shall include the mayor's comments and recommendations pertaining to those budget proposals. In the event that these proposals, taken together, exceed the mayor's estimate of available resources, the budget message shall include specific recommendations of the mayor to assist the town council in bringing the proposed expenditures in the budget into harmony with the anticipated resources. For the purposes of assisting the mayor in the responsibilities assigned to the office of the mayor by these provisions of the charter the town manager shall ensure that all necessary information and assistance under the town manager's control is provided to the mayor in a timely fashion.

SECTION 6-9: THE BUDGET

The proposed operating budget shall provide a complete financial plan for all town funds and town activities for the ensuing fiscal year. Except as may otherwise be required by general law, or this charter, it shall be in the form which the mayor deems desirable or as a town ordinance may require. In the presentation of the budget, the mayor shall utilize modern concepts of fiscal presentation so as to furnish an optimum level of information and the best financial control. The budget shall show in detail all estimated income from the proposed property tax levy and from all other sources and all proposed expenditures, including debt service, for the following year. The budget shall be arranged to show the actual and estimated income and expenditures for the two previous, the current and the ensuing fiscal years and shall indicate in separate sections:

- (a) Proposed expenditures for current operations during the ensuing fiscal year, detailed by town agency and position in terms of work programs, and the method of financing such expenditures;
- (b) Proposed capital expenditures during the ensuing fiscal year, detailed by town agency, and the proposed method of financing each such capital expenditure;
- (c) The relationship of each proposed capital expenditure to the capital improvement program required to be submitted under section 6-12 and
- (d) A summary of available reserve balances.
- (e) A summary of current and long term debt obligations.

SECTION 6-10: ACTION ON THE BUDGET

(a) Public Hearing - Forthwith upon its receipt of the proposed operating budget the town council shall provide for the publication in a local newspaper of a notice stating the time and place, not less than seven nor more than fourteen days following such publication, at which it will hold a public hearing on the proposed operating budget as submitted.

(b) Review - The town council, or a committee of the town council, shall consider, in open public meetings, the detailed expenditures proposed for each town agency and may confer with representatives of each such agency in connection with its review and consideration. The town council may require the mayor, or any other town agency, to furnish it with such additional information as it may deem necessary to assist it in its review and consideration of the proposed operating budget.

(c) Action by Town Council - The town council shall adopt the budget, with or without amendments, within sixty days following the date the proposed budget was received by it or such other period as may be provided by applicable law. In

amending the budget the town council may add or increase programs or amounts and may delete or decrease programs or amounts, except expenditures required by law or for debt service, provided, however, no amendment to the budget shall increase the total of authorized expenditures to an amount greater than the total amount of estimated income from all sources.

SECTION 6-11: BUDGET TRANSFERS, SUPPLEMENTARY BUDGETS, OTHER APPROPRIATIONS

(a) Expenditures and Transfers - The town manager may expend funds within the appropriation categories established by the town council consistent with the expressed purposes of those categories. A full accounting of expenditures by category shall be provided to the mayor or to the council upon request. With the approval of the town council, funds appropriated to one category may be transferred to another. Requests to the town council for the transfer of funds from one appropriation category to another shall be made by the mayor, in writing, and shall include a statement setting forth the reason the additional funds are needed in the category to which it is proposed they be transferred and the impact, if any, of the transfer on functions within the category from which the transfer is proposed. A copy of this request shall, forthwith, be posted on the town bulletin board. The town council shall, by its rules, provide a procedure governing such transfer requests that shall include at least two readings and a public hearing by the town council. Such rule shall specify the circumstances under which notice by publication in a newspaper shall be required and circumstances under which simple posting on the town bulletin board shall be sufficient.

(b) Supplementary Appropriations - Whenever the mayor or the town manager shall submit to the town council a request for a new appropriation of any sum of money, either as a supplement to some item in the annual operating budget or for an item, or items, not included in the annual operating budget as adopted, the town council shall not act upon such request until it has (1) given notice by publication in a local newspaper of the request, and (2) held a public hearing concerning such request. The publication of the notice and the public hearing shall be generally in conformity with the provisions of section 6-9 concerning the proposed annual operating budget.

SECTION 6-12: CAPITAL IMPROVEMENT PROGRAM

The mayor shall submit annually a five-year capital improvement program to the town council. It shall include:

- (a) a summary of policies guiding the development of the program;
- (b) a clear and concise general summary of its contents;
- (c) a list of all capital improvements proposed to be undertaken during the life of the plan;
- (d) cost estimates, methods of financing and recommended time schedules for each improvement; and,
- (e) the estimated operating budget impacts of proposed capital improvements.

This information is to be revised annually by the mayor with regard to the capital improvements still pending or in the process of being acquired, improved or constructed.

The capital improvement program shall be based on material prepared by a joint capital planning committee convened by the mayor and comprised of the town manager, or a person designated to represent the town administration by the town manager, representatives of the citizen advisory committee on finance and representatives from the school committee and board of library trustees. The town may, by ordinance, make further provisions regarding the make-up, powers, duties, procedures and other matters regarding the joint capital planning committee.

SECTION 6-13: INDEPENDENT AUDIT

The town council shall annually select a town auditor who shall be a certified public accountant and who shall conduct, at a minimum, an annual financial audit of the town's books and accounts in accordance with applicable federal and state auditing standards for governmental entities. The town council may direct the town auditor to conduct additional limited scope financial and performance audits as the council may from time to time deem to be necessary or desirable. Funds necessary to complete auditing activities as directed by the town council shall be included in the annual operating budget. Every person holding an office, position or employment under the town shall cooperate fully with the town auditor in the performance of this audit function.

The report of the town auditor on the prior year's financial activities shall be filed in final form with the town council not later than March first of the subsequent fiscal year.

The town council shall provide for one of its committees to coordinate the work of the town auditor.

ARTICLE 7 OTHER ELECTED TOWN OFFICES

SECTION 7-1: SCHOOL COMMITTEE

(a) *Composition* - There shall be a school committee which shall consist of five members. The mayor shall serve, by virtue of office, as a member of the school committee with all of the rights and privileges of a member, except the right to vote.

(b) *Term of Office* - The term of office for school committee members shall be for four years each, beginning on the first business day of January in the year following their election, and until their successors have been qualified. The terms of office shall be so arranged that as nearly an equal a number of such terms as is possible shall be filled at each biennial election.

(c) *Eligibility* --A school committee member shall at the time of election be a voter. If a school committee member removes from the town during the term for which elected such office shall immediately be deemed vacant and filled in the manner provided in section 7-6.

SECTION 7-2: SCHOOL COMMITTEE CHAIR

(a) *Election and Term* - As soon as practicable after the school committee members-elect have been qualified following each biennial town election, as provided in section 8-10, the school committee shall organize by electing one of its members to serve as school committee chair and another one of its members to serve as school committee vice chair until the next town election.

(b) *Powers and Duties* - The school committee chair shall preside at all meetings of the school committee, regulate its proceedings and shall decide all questions of order. The school committee chair shall appoint all members of all committees of the school committee, whether special or standing. The school committee chair shall have the same powers to vote upon all measures coming before the school committee as any other member of the school committee. The school committee chair shall perform such other duties consistent with the office as may be provided by charter, by ordinance or by other vote of the school committee. The school committee vice chair shall serve as chair during the absence or disability of the chair.

SECTION 7-3: PROHIBITIONS

No member of the school committee shall hold any other town office or town employment for which a salary or other emolument is payable from the town treasury. No former member of the school committee shall hold any compensated appointed town office or town employment until two years following the date on which such member's service on the school committee has terminated. This provision shall not prevent a town officer or other town employee who has taken a leave of absence in order to serve as a member of the school committee from returning to the same office or other position of town employment held at the time such leave of absence commenced; provided, however, no such person shall be eligible for any other municipal position until at least two years following the termination of service as a member of the school committee

SECTION 7-4: EXPENSES

Subject to appropriation and to prior authorization, the school committee members shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their duties.

SECTION 7-5: SCHOOL COMMITTEE POWERS AND DUTIES

The school committee shall have all powers which are conferred on school committees by general laws and such additional powers and duties as may be provided by the charter, by ordinance, or otherwise and not inconsistent with said grant of powers conferred by general laws. The powers and duties of the school committee shall include the following:

- 1) To appoint a superintendent of the schools who shall be charged with the day-to-day administration of the school system, subject only to policy guidelines and directives adopted by the school committee and, upon the recommendation of said superintendent, to establish and appoint assistant or associate superintendents (as provided in section fifty nine of chapter seventy-one of the General Laws);
- 2) To make all reasonable rules and regulations for the management of the public school system and for conducting the business of the school committee as may be deemed necessary or desirable;
- 3) To propose and to oversee the administration of an annual operating budget for the school department, subject to appropriation by the town council.

The school committee shall have general charge and superintendence of all school buildings and grounds and shall furnish all school buildings with proper fixtures, furniture and equipment.

Whenever the school committee shall determine that additional classrooms are necessary to meet the educational needs of the community, at least one member of the school committee, or a designee of the school committee, shall serve on the agency, board or committee to which the planning or construction of such new, remodeled or renovated school building is delegated.

No site for a school building shall be acquired unless the approval of the site by the school committee is first obtained. No plans for the construction of or alterations in a school building shall be accepted, and no work shall be begun on the construction or alteration of a school building, unless with the approval of the school committee and the town manager. The town manager shall notify the school committee, in writing, prior to or at the time of each change in plans after work is begun.

SECTION 7-6: FILLING OF VACANCIES

Whenever a vacancy shall occur in the office of school committee member the vacancy shall be filled by majority vote of a joint convention of the town council and the remaining members of the school committee. Persons so elected to fill a vacancy on the school committee shall serve only until the next regular election at which time the vacancy shall be filled by the voters and the person chosen to fill such vacancy shall forthwith be sworn and shall serve for the remainder of the unexpired term in addition to the term for which elected. Persons serving as school committee members under this section shall not be entitled to have the words "candidate for re-election" printed against their names on the election ballot.

SECTION 7-7: BOARD OF TRUSTEES OF THE PUBLIC LIBRARY

(a) *Composition, Term of Office* - There shall be a board of trustees of the public library which shall consist of six members elected for terms of four years each so arranged that an equal number of terms shall expire at each town election. The mayor shall serve, by virtue of office, as a member of the board of trustees of the public library with all of the rights and privileges of a member, except the right to vote.

(b) *Powers and Duties* - The board of trustees of the public library shall have the care and management of the public library and all property under the jurisdiction of the public library both real and personal. The board of trustees of the public library shall have all of the powers and duties, authority and responsibilities as are afforded to library trustees by general laws and it shall have such additional powers and duties, authority and responsibilities as are provided in any wills, trusts or other gifts made to the library and accepted by the town.

The board of trustees of the town library is authorized to receive funds from The Jones Library, Incorporated, and spend them together with funds appropriated by the town for libraries and with funds received from other sources, as a single fund without reference to source, for the operation of a free town library in the town except that trust fund income received from any source shall be used by said board only for the purposes designated in each case as to the trust of its origin.

Any public building, with appurtenant land, owned by said town may by vote of the town council be turned over to the custody of the board of trustees of the town library to be used as part of a free town library; and said board may receive custody of, manage and maintain, any premises or tangible property of, and turned over to it by, The Jones Library, Incorporated. Said board may use town funds for the maintenance, repair and enlargement of property of The Jones Library, Incorporated, while in the custody of said board.

(c) *Filling of Vacancies* - Whenever a vacancy shall occur in the office of trustee of the public library such vacancy shall be filled by majority vote of a joint convention of the town council and the remaining members of the board of trustees of the public library. Persons so elected to fill a vacancy on the board of trustees of the public library shall serve only until the next regular election at which time the vacancy shall be filled by the voters and the person chosen to fill such vacancy shall forthwith be sworn and shall serve for the remainder of the unexpired term in addition to the term for which elected. Persons serving as trustees of the public library under this section shall not be entitled to have the words "candidate for re-election" printed against their names on the election ballot.

SECTION 7-8: ELECTOR OF THE WILL OF OLIVER SMITH

(a) *Composition, Term of Office* - There shall be an elector of the will of Oliver Smith who shall be elected for a term of two years.

(b) *Powers and Duties* - The elector under the will of Oliver Smith shall have such powers and duties, authority and responsibilities as are provided in the will of Oliver Smith.

(c) Whenever a vacancy shall occur in the office of elector of the will of Oliver Smith such vacancy shall be filled by majority vote of a joint convention of the town council and the members of the school committee. A person elected to fill a vacancy by a joint convention of the town council and the school committee shall serve only until the next regular election at which time the vacancy shall be filled by the voters. A person serving as elector of the will of Oliver Smith

under this section shall not be entitled to have the words "candidate for re-election" printed against his or her name on the election ballot.

ARTICLE 8 ELECTIONS, ELECTION-RELATED MATTERS

SECTION 8-1: TOWN ELECTIONS; GENERAL AND PRELIMINARY

(a) *Date of Town Election* - The regular town election shall be held on the first Tuesday following the first Monday in November of each odd-numbered year.

(b) *Date of Preliminary Town Election* - On the fourth Tuesday preceding every regular town election a preliminary election shall be held for the purpose of nominating candidates, provided, however the town clerk may, with the approval of the town council, reschedule such election to the fifth such Tuesday to avoid a conflict with any civil or religious holiday. Whenever a special election to fill a vacancy in the office of mayor is to be held, a preliminary election shall be conducted twenty-eight days proceeding the date established for such special election.

(c) *Signatures Required for Nomination* - The number of signatures of voters required to place the name of a candidate on the official ballot to be used at an election shall be as follows: For the office of mayor not fewer than five hundred signatures, provided, however, not more than one hundred twenty such signatures shall be from any one district as established in section 8-3; for the office of councilor-at-large not fewer than two hundred fifty signatures, provided, however, not more than sixty such signatures shall be from any one district; for the office of district councilor not fewer than one hundred signatures all of which shall be of voters from the district from which such district councilors seek election; for the offices of school committee member, member of the board of trustees of the public library, and elector of the Oliver Smith will not fewer than fifty signatures.

(c) *Ballot Position* - The order in which names of candidates appear on the ballot for each office shall be determined by a drawing by lot conducted by the town clerk in the presence of such candidates, or their representatives, as may choose to attend such drawings.

(d) *Information to Voters* - If a candidate is an elected incumbent of the office, against the candidate's name shall appear the phrase "candidate for re-election."

SECTION 8-2: PRELIMINARY ELECTIONS

(a) *Signature Requirements* - The number of signatures of voters required to place the name of a candidate on the official ballot to be used at a preliminary election shall be as follows: For the office of mayor not fewer than five hundred signatures, provided, however, not more than one hundred twenty such signatures shall be from any one district as established in section 8-3; for the office of councilor-at-large not fewer than two hundred fifty signatures, provided, however, not more than sixty such signatures shall be from any one district; for the office of district councilor not fewer than one hundred signatures all of which shall be of voters from the district from which such district councilors seek election; for the offices of school committee member, member of the board of trustees of the public library, and elector of the Oliver Smith will not fewer than fifty signatures.

(b) *Determination of Candidates for Election* - The two persons receiving at a preliminary election the highest number of votes for nomination for an office shall be the sole candidates for that office whose names may be printed on the official ballot to be used at the regular election at which such office is to be filled, and no acceptance of a nomination at a preliminary election shall be necessary to its validity.

If two or more persons are to be elected to the same office at such regular election, the several persons in number equal to twice the number to be so elected receiving at such preliminary election the highest number of votes for nomination for that office shall be the sole candidates for that office whose names may be printed on the official ballot.

If the preliminary election results in a tie vote among candidates for nomination receiving the lowest number of votes, which but for said tie vote would entitle a person receiving the same to have the person's name printed upon the official ballot for the election, all candidates participating in said tie vote shall have their names printed upon the official ballot, although in consequence thereof, there be printed on such ballots the names of candidates exceeding twice the number to be elected.

(c) *Nomination of Candidates; Conditions Making Preliminary Election Unnecessary* - If at the expiration of the time for filing petitions of candidates to be voted for at any preliminary election, not more than twice as many such petitions have been filed with the town clerk for an office as are to be elected to such office, the candidates whose petitions have thus been

filed shall be deemed to have been nominated to said office and their names shall be voted on for such office at the succeeding regular election, and the town clerk shall not print said names upon the ballot to be used at said preliminary election and no other nomination to said office shall be made. If in consequence it shall appear that no names are to be printed upon the official ballots to be used in any particular district, or districts of the town no preliminary election shall be held in such district or districts.

SECTION 8-3: PRECINCTS AND DISTRICTS

The town council shall provide for a decennial division of the territory of the town into precincts in accordance with the provisions of section six of chapter fifty-four of the General Laws. The town council shall further provide for a division of the town into five districts so established as to consist of as nearly equal a number of inhabitants as it is possible, consistent with applicable law, in compact and contiguous territory; bounded insofar as possible by the center line of known streets or ways or by other well defined limits. Each such district shall be composed of voting precincts otherwise established in accordance with general laws. The town council shall from time to time, but at least once in each ten years, review such districts to ensure their uniformity in number of inhabitants, consistent with applicable law.

SECTION 8-4: APPLICATION OF STATE LAWS

Except as expressly provided in the charter and authorized by statute, all town elections shall be governed by the laws of the commonwealth relating to the right to vote, the registration of voters, the nomination of candidates, the conduct of preliminary and regular elections, the submission of charter amendments and other propositions, the counting of votes and the declaration of results.

SECTION 8-5: FREE PETITION

(a) Individual Petitions, Action Discretionary - The town council shall receive all petitions which are addressed to them and signed by a voter and may, in its discretion, take such action with regard to each petition as it deems necessary and appropriate.

(b) Group Petitions; Action Required - The town council shall hold a public hearing and act by taking a vote on the merits of every petition which is addressed to it and which is signed by at least fifty voters. The hearing shall be held by the town council, or by a committee or subcommittee thereof. The town council shall vote on the merits of the petition not later than three months after the petition is filed with the town clerk.

Hearings on two or more petitions filed under this section may be held at the same time and place. The town clerk shall mail notice of the hearing to the ten petitioners whose names first appear on each petition at least seven days before the hearing. Notice by publication at least seven days prior to all such hearings shall also be made, and shall be at public expense. No hearing shall be required to be held upon any one subject more than once in any given twelve month period notwithstanding the filing of additional petitions during such period.

SECTION 8-6: CITIZEN INITIATIVE MEASURES

(a) Commencement - Initiative procedures shall be started by the filing of a proposed initiative petition with the clerk of the council. The petition shall be addressed to the town council, shall contain a request for the passage of a particular measure which shall be set forth in full in the petition, and shall be signed by at least fifty voters. The petition shall be accompanied by an affidavit signed by ten voters and containing their residential addresses stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form. One such petitioner shall be designated as clerk.

(b) Referral to Town Attorney - The clerk of the council shall forthwith following receipt of each such proposed petition deliver a copy of the petition to the town attorney. The town attorney shall, within fifteen days following receipt of a copy of the petition, in writing, advise the town council whether the measure as proposed may lawfully be proposed by the initiative process and whether, in its present form, it may be lawfully adopted by the town council. If the opinion of the town attorney is that the measure is not in proper form the reply shall state the reasons for such opinion, in full. A copy of the opinion of the town attorney shall also be mailed to the person designated as clerk of the petitioners' committee.

(c) Submission to Town Clerk - If the opinion of the town attorney is that the petition is in a proper form the town clerk shall provide blank forms for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary of the proposed measure, as determined by the town attorney, together with the names and addresses of the first ten voters who signed the originating petition. Within five days following the date the blank forms are issued by the town clerk the petitions shall be returned and filed with the town clerk signed by at least five per cent of the total number of active voters as of the date of the most recent town election. Signatures to an initiative petition need not all be on one paper, but all such papers pertaining to any one measure shall be fastened together and shall be filed as a single instrument, with the endorsement thereon of the name and residence address of the person designated as filing the same. With each signature on the petition there shall also appear the street and number of the residence of each signer.

Within ten days following the filing of the petition the board of registrars of voters shall ascertain by what number of voters the petition has been signed, and what percentage that number is of the total number of active voters as of the date of the most recent town election. The town clerk shall attach to the petition a certificate showing the results of the examination of the registrars of voters and shall return the petition to the clerk of the council. A copy of the certificate of the board of registrars of voters shall also be mailed to the person designated as clerk of the petitioners' committee.

(d) Action on Petitions - Within thirty days following the date a petition has been returned to the clerk of the council, and after publication in accordance with the provisions of section 2-9(c), the town council shall act with respect to each initiative petition by passing it without change, by passing a measure which is stated to be in lieu of the initiative measure, or by rejecting it. The passage of a measure which is in lieu of an initiative measure shall be deemed to be a rejection of the initiative measure. If the town council fails to act with respect to any initiative measure which is presented to it within thirty days following the date it is returned to it, the measure shall be deemed to have been rejected on such thirtieth day. If an initiative measure is rejected, the clerk of the council shall promptly give notice of that fact to the person designated as the clerk of the petitioners' committee, by certified mail.

(e) Supplementary Petitions - Within five days following the date an initiative petition has been rejected a supplemental initiative petition may be filed with the clerk of the council, but only by persons constituting the original petitioners' committee. The supplemental initiative petition shall be signed by a number of additional voters which is equal to five per cent of the total number of active voters as of the date of the most recent town election. If the number of signatures to such supplemental petition is found to be sufficient by the registrars of voters, the town council shall call a special election to be held on a date fixed by it not less than thirty-five nor more than ninety days following the date of the certificate of the town clerk that a sufficient number of voters have signed the supplemental initiative petition and shall submit the proposed measure, without alteration, to the voters for determination; provided, however, if any other town election is to be held within one hundred and twenty days following the date of the said certificate, the town council may omit the calling of such special election and cause said question to appear on the election ballot at such approaching election for determination by the voters.

(f) Publication - The full text of any initiative measure which is submitted to the voters shall be published in a local newspaper not less than seven nor more than fourteen days preceding the date of the election at which such question is to be voted upon. Additional copies of the full text shall be available for distribution to the public in the office of the town clerk.

(g) Form of Question - The ballots used when voting on a measure proposed by the voters under this section shall contain a question in substantially the following form:

Shall the following measure which was proposed by an initiative petition take effect?

(Here insert a fair, concise summary prepared by the petitioners, and approved by the Town Attorney.)

YES

NO

(h) Time of Taking Effect - If a majority of the votes cast on the question is in the affirmative, the measure shall be deemed to be effective forthwith, unless a later date is specified in such measure, and provided, however, the number of votes cast in support of the measure is equal to eighteen percent, or more, of the total number of active voters as of the date of the most recent town election.

SECTION 8-7: REFERENDUM PETITION; EFFECT ON FINAL PASSAGE

If within five days after the final passage of any measure a petition signed by voters equal in number to at least five per cent of the total number of active voters, and addressed to the town council protesting against such measure or any part thereof taking effect, is filed with the town clerk, the same shall thereupon and thereby be suspended from taking effect; and the town council shall immediately reconsider such measure or part thereof; and if such measure or part thereof is not entirely rescinded the town council shall submit the same, by the method herein provided, to a vote of the voters either at the next regular town election, or at a special election which may, in its discretion, be called for the purpose and such measure or part thereof shall forthwith become null and void if a majority of the voters voting on the same at such election vote in the negative, provided, however, the number of votes cast in opposition to the measure or part thereof is equal to eighteen percent, or more, of the total number of active voters as of the date of the most recent town election. The petition described in this section shall be termed a referendum petition and section 8-6 shall apply to the procedure in respect thereto, except that the words "measure or part thereof protested against" shall for this purpose be understood to replace "measure" in said section whenever it may occur, and "referendum" shall be understood to replace the word "initiative" in said section.

SECTION 8-8: MEASURES NOT SUBJECT TO INITIATIVE AND REFERENDUM

Measures which include the following subject matter shall not be subject to initiative and referendum procedures: (a) revenue loan orders; (b) appropriations for the payment of debt or debt service; (c) internal operational procedures of the town council; (d) emergency measures; (e) the town budget as a whole or the school committee budget as a whole; (f) appropriation of funds to implement a collective bargaining agreement; (g) procedures relating to election, appointment,

removal, discharge or any other personnel action; (h) an appropriation of fifty thousand dollars, or less and (i) proceedings providing for the submission or referral of a matter to the voters at an election.

SECTION 8-9: SUBMISSION OF PROPOSED MEASURE TO VOTERS

The town council may, of its own motion, submit to a vote of the voters for adoption or rejection at a general or special town election any proposed measure, or a proposition for the repeal or amendment of any measure, in the same manner and with the same force and effect as are hereby provided for submission on petition.

SECTION 8-10: MEASURES WITH CONFLICTING PROVISIONS

If two or more proposed measures passed at the same election contain conflicting provisions, only the one receiving the greater number of affirmative votes shall take effect.

SECTION 8-11: RECALL OF ELECTED OFFICE HOLDERS

(a) Application - Any holder of an elected office in the town, with more than six months remaining in the term of office for which the officer was elected, may be recalled there from by the voters of the town in the manner provided in this section. No recall petition shall be filed against an officer within six months after taking office.

(b) Recall Petition - A recall petition may be initiated by the filing of an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for recall, provided that the affidavit is signed by at least two hundred fifty voters for any officer elected at large and signed by at least fifty voters from the district represented for a district councilor.

The town clerk shall thereupon deliver to said voters making the affidavit, copies of petition blanks demanding such recall, copies of which printed forms the town clerk shall keep available. Such blanks shall be issued by the town clerk, with signature and official seal attached thereto. They shall be dated, shall be addressed to the town council and shall contain the names of all the persons to whom they are issued, the number of blanks so issued, the name of the person whose recall is sought, the office from which removal is sought and the grounds of recall as stated in the affidavit. A copy of the petition shall be entered in a record book to be kept in the office of the town clerk. Said recall petition shall be returned and filed with the town clerk within five days after the filing of the affidavit, and shall have been signed by at least five per cent of the active voters of the town for any officer elected at large and signed by at least five per cent of the active voters of the district for a district councilor.

The town clerk shall forthwith submit the petition to the registrars of voters, and the registrars shall, within five working days, certify thereon the number of signatures which are names of voters.

(c) Recall Election - If the petition shall be found and certified by the town clerk to be sufficient, the town clerk shall submit the same with such certificate to the town council within five working days, and the town council shall forthwith give written notice of the receipt of the certificate to the officer sought to be recalled and shall, if the officer does not resign within five days thereafter, order an election to be held on a date fixed by them not less than forty-five and not more than sixty days after the date of the town clerk's certificate that a sufficient petition has been filed; provided, however, that if any other town election is to occur within sixty days after the date of the certificate the town council shall postpone the holding of the recall election to the date of such other election.

If a vacancy occurs in said office after a recall election has been ordered, the election shall not proceed as provided in this section.

(d) Office Holder - The incumbent shall continue to perform the duties of the office until the recall election. If said incumbent is not recalled, the incumbent shall continue in office for the remainder of the unexpired term subject to recall as before. If recalled the officer shall be deemed removed and the office vacant. The vacancy created thereby shall be filled in accordance with this charter. Any person appointed to fill the vacancy caused by such recall shall hold office for the unexpired term of the officer recalled.

(e) Ballot Proposition - The form of the question to be voted upon shall be substantially as follows:

"**Shall** [here insert the name and title of the elective officer whose recall is sought] **be recalled?**"

Yes No

If a majority of the votes cast upon the question of recall is in the affirmative, such elected officer shall be recalled, provided the number of votes cast in support of the recall is equal to eighteen percent, or more, of the total number of active voters as of the date of the most recent town election.

(f) Repeat of Recall - In the case of an officer subjected to a recall election and not recalled thereby, no recall petition shall be filed against such officer until at least ninety days after the election at which the officer's recall was submitted to the voters of the town.

(g) Office Holder Recalled - No person who has been recalled from an office or who has resigned from office while recall proceedings were pending against such person, shall be appointed to any town office within two years after such recall or such resignation.

ARTICLE 9 GENERAL PROVISIONS

SECTION 9-1: CHARTER REVISION OR AMENDMENT

This charter may be replaced, revised or amended in accordance with any procedure made available by Article LXXXIX of the amendments to the constitution of the commonwealth and any laws of the commonwealth enacted to implement said constitutional amendment.

SECTION 9-2: SEVERABILITY

The provisions of this charter are severable. If any of the provisions of this charter are held to be unconstitutional, or invalid, the remaining provisions of this charter shall not be affected thereby. If the application of this charter, or any of its provisions, to any person or circumstance is held to be invalid, the application of said charter and its provisions to other persons or circumstances shall not be affected thereby.

SECTION 9-3: RULES OF INTERPRETATION

The following rules shall apply when interpreting the charter:

(a) Specific Provisions to Prevail - To the extent that any specific provision of the charter shall conflict with any provision expressed in general terms, the specific provision shall prevail.

(b) Number and Gender - Words imparting the singular number may extend and be applied to several persons or things; words imparting the plural number may include the singular; words imparting the masculine gender shall include the feminine gender.

(c) Computation of Time - In computing time under the charter, if seven days or fewer, only business days (not including Saturdays, Sundays, or legal holidays) shall be counted; if more than seven days, every day shall be counted, provided, however, if the last day of the period so computed would fall on a Saturday, Sunday or a legal holiday the period shall end at five o'clock P.M. on the first business day following such Saturday, Sunday or legal holiday.

SECTION 9-4: REMOVAL OR SUSPENSION

(a) Excessive Absence, Member of Multiple Member Body - If any person appointed to serve as a member of a multiple member body shall fail to attend four or more consecutive meetings, or one-half or more of all of the meetings of such body held in one twelve-month period, the remaining members of the multiple member body may, by majority vote of the remaining members of such body, declare the office to be vacant, provided, however, that not less than ten days prior to the date said vote is scheduled to be taken the body has given in hand, or mailed, by certified mail, return receipt requested, notice of such proposed or pending vote to the last known address of such person. A copy of any such vote which is adopted shall, forthwith, be delivered to the office of the town clerk.

(b) Removal and Suspension, Generally - Any appointed town officer, or member of a multiple member body, not subject to the provisions of the state civil service law, whether appointed for a fixed or an indefinite term, may be suspended or removed from office, without compensation, by the appointing authority for good cause. The term cause shall include, but not be limited to the following: incapacity other than temporary illness, inefficiency, insubordination and conduct unbecoming the office.

Any appointed town officer, or member of a multiple member body of the town may be suspended from office by the appointing authority if such action is deemed by said appointing authority to be necessary to protect the interests of the town. However, no suspension shall be for more than fifteen days. Suspension may be conterminous with removal and shall not interfere with the rights of the officer or member under the removal procedure given below.

The appointing authority, when removing any such officer or member of a multiple member body of the town, shall act in accordance with the following procedure:

- (i) A written notice of the intent to remove and a statement of the cause or causes therefor shall be delivered in hand, or by certified mail, return receipt requested, to the last known address of the person sought to be removed.
- (ii) Within five days following delivery of such notice the officer or member of a multiple member body of the Town may request a public hearing before the appointing authority at which such person may be represented by counsel, shall be entitled to present evidence, call witnesses and to question any witness appearing at the hearing.

SECTION 9-5: RULES AND REGULATIONS

A copy of all rules and regulations adopted by any town agency shall be placed on file in the office of the town clerk and shall be available for review by any person who requests such information at any reasonable time. No rule or regulation adopted by any town agency shall become effective until five days following the date it is so filed.

SECTION 9-6: PERIODIC REVIEW OF CHARTER AND ORDINANCES

(a) Review of Ordinances - Not later than the first day of July, at five year intervals, in each year ending in a five or in a zero, the mayor and town council shall provide for a review to be made of the ordinances of the town for the purpose of preparing a proposed revision or recodification of the same, without substantive change. Such review shall be made by a special committee to consist of nine members who shall be chosen as follows: the town council shall designate five persons who may, but need not, be members of the town council and the mayor shall designate four persons to the committee. Vacancies shall be filled in the manner of original appointment.

The special committee, which shall be referred to as the ordinance review committee, shall file its report with the clerk of the council, not later than the first day of May in the year following the year in which the committee is appointed. The recommendations of the special committee shall appear on the council agenda for action before the fifteenth day of June in said year and if not so scheduled by the clerk of the council the matter shall come before the council for action at its next meeting held following the said fifteenth day of June and no other business shall be in order until such report has been acted upon, by roll call vote.

The review of town ordinances shall be under the supervision of the town attorney, or special counsel appointed for that express purpose. A revision, recodification or republication of the ordinances shall be made at five year intervals. Copies of the revision, recodification or republication shall be made available to the public at a cost not to exceed the actual cost of such reproduction.

In each year between such reenactments, an annual supplement shall be published which shall contain all ordinances and amendments to ordinances adopted in the preceding year.

(b) Review of Charter - The committee established to review town ordinances shall also consider proposed revisions to the town charter. The committee shall hold at least one open, public hearing at which the public will be afforded the opportunity to comment on the existing charter and to make comments or suggestions concerning ways in which the charter might be changed.

SECTION 9-7: UNIFORM PROCEDURES GOVERNING MULTIPLE MEMBER BODIES

(a) Meetings - All multiple member bodies of the town, whether elected, appointed or otherwise constituted, shall meet regularly at such times and places as they may by their own rules prescribe, unless some other provision is made by ordinance or by law. Special meetings of any multiple member body shall be held on the call of the chair or by one third of the members thereof by written notice delivered in hand or to the place of residence of each member at least forty-eight weekday hours in advance of the time set, which shall contain notice of the subjects to be acted upon. A copy of the said notice shall also be posted on the town bulletin board. Except as may otherwise be authorized by law, all meetings of all multiple member bodies shall at all times be open to the public and the media.

(b) Rules and Journals - Each multiple member body shall determine its own rules and order of business unless another provision is made by ordinance or by law, and shall provide for keeping a journal of its proceedings. These rules and journals shall be a public record and for the convenience of the public certified copies shall be placed on file in the office of the town clerk and in the main branch of the public library. In case of any dispute concerning any such record the official copy shall always be deemed to be the copy kept by the clerk of the multiple member body.

(c) Voting - If requested by any member, any vote of any multiple member body shall be taken by a call of the roll and the vote of each member shall be recorded in the journal, provided, however, if the vote is unanimous, only that fact need be recorded.

(d) Quorum - A majority of the members of a multiple member body shall constitute a quorum, but a smaller number may meet and adjourn from time to time. Unless some other provision is made by law, by ordinance or by the multiple member

body's own rules while a quorum is present, except on procedural matters, a majority of the full membership of the body shall be required to adopt any vote representing an exercise of the powers of the multiple member body.

SECTION 9-8: OATH OF OFFICE OF ELECTED TOWN OFFICERS

The mayor, councilors-elect, school committee members-elect, library trustees-elect and the elector of the will of Oliver Smith shall, on the first business day in January following the biennial town election, meet and be sworn to the faithful discharge of their duties. The oath may be administered by the town clerk, or by a judge of a court of record, or by a justice of the peace. A certificate that said oath or oaths have been taken shall be entered in the journal of the town council.

In case of the absence of any elected official on said day, the oath of office may at any time thereafter be administered to such person who for any reason shall not have taken the oath on the day named. A certificate of each oath subsequently taken shall be entered in the journal of the town council.

After the oath has been administered to the councilors-elect, the town council shall meet to organize by electing from among their number a person to serve as the president and a person to serve as the vice-president, as provided in section 2-2. If the town clerk is unable to preside during such election the council member senior in years of service on the town council shall preside during such election. If two or more members are equally senior in years of service on the town council the member senior both in years of service and age shall preside. The president and vice-president shall be sworn by the town clerk, or, in the case of the absence of the town clerk, by any person qualified to take oaths or affirmations.

After the oath has been administered to the school committee members-elect, the school committee shall organize by electing from among their number a person to serve as the chair and a person to serve as the vice-chair, as provided in section 7-2. If the town clerk is unable to preside during such election the member senior in years of service on the school committee shall preside during such election. If two or more members are equally senior in years of service on the school committee the member senior both in years of service and age shall preside. The chair and the vice-chair shall be sworn by the town clerk, or, in the case of the absence of the town clerk, by any person qualified to take oaths or affirmations.

After the oath has been administered to the library trustees-elect, the board of trustees of the public library shall organize by electing from among their number a person to serve as the chair and a person to serve as the vice-chair. If the town clerk is unable to preside during such election the member senior in years of service on the board of trustees of the public library shall preside during such election. If two or more members are equally senior in years of service on the board of trustees of the public library the member senior both in years of service and age shall preside. The chair and the vice-chair shall be sworn by the town clerk, or, in the case of the absence of the town clerk, by any person qualified to take oaths or affirmations.

SECTION 9-9: CERTIFICATE OF ELECTION OR APPOINTMENT

Every person who is elected, including those elected by the town council, or appointed to an office of the town, shall receive a certificate of such election or appointment from the town clerk. Except as otherwise provided by law, every person who is elected, including those elected by the town council, or appointed to an office of the town, before performing any act under such appointment or election, shall take and subscribe to an oath to qualify to enter upon the duties of office. A record of such oath shall be kept by the town clerk.

SECTION 9-10: LIMITATION ON OFFICE HOLDING

No person shall simultaneously hold more than one full time town office or position of employment. Any hours worked in any part time position shall not be the same or otherwise conflict with the hours worked in a full time position.

SECTION 9-11: ENFORCEMENT OF CHARTER PROVISIONS

It shall be the duty of the mayor to see that the provisions of the charter are faithfully followed and complied with by all town agencies and town employees. Whenever it appears to the mayor that any town agency or town employee is failing to follow any provision of this charter the mayor shall, in writing, cause notice to be given to such agency or employee directing compliance with the charter. If it shall appear to the town council that the mayor personally is not following the provisions of the charter it shall, by resolution, direct the attention of the mayor to those areas in which the council members believe there is a failure to comply with charter provisions.

The procedures made available in chapter two hundred and thirty-one A of the General Laws may be used to determine the rights, duties, status or other legal relations arising under this charter, including any question of construction or validity which may be involved in such determination.

SECTION 9-12: PUBLIC FORUMS

(a) *Scheduled Meetings* – The mayor shall convene at least two open, public forums, annually, for the purpose of providing an opportunity for the public to bring matters to the attention of the elected and appointed officers of the town.

One such forum shall be held in the fall, during the last week of October, and shall primarily focus on the delivery of services by the town, and one such forum shall be held in the spring, during the last week in March, and shall primarily focus on budgeting and other spending matters.

The mayor shall preside, regulate the proceedings and decide all questions of order. All elected and appointed officials of the town shall be invited to attend in order to be available to respond to questions raised by the public and to hear comments, criticisms and suggestions made with respect to areas within the scope of the responsibilities of such elected and appointed officials.

The forum shall be held in a place convenient for the public and at least two weeks notice shall be given by newspaper advertisement and such other methods as are deemed to be necessary or desirable. The notice shall state the date, time and place at which each forum will be held and the subjects to be discussed.

(b) Meetings on Petition of Voters – The mayor shall call public forums upon the receipt of a written request setting forth the purpose or purposes for which such meeting is to be called, and signed by three hundred, or more voters. The mayor shall preside and regulate the proceedings of such meetings. The mayor, in conjunction with the town manager, shall cause the attendance of town officials and employees as may be necessary to respond to the issues and concerns raised by the voters in their petitions.

SECTION 9-13: ANNUAL REPORT OF THE TOWN

An annual report which contains a general summary of the activities of all town agencies shall be published within one hundred and twenty days following the close of each fiscal year. The annual report shall contain reports by the mayor, the town council, the town manager, the treasurer, the school committee, the board of library trustees and such other town agencies as may be required by ordinance to provide such reports.

SECTION 9-14: NOTICE OF VACANCIES

Whenever a vacancy occurs, or is about to occur, in any town office or town employment the appointing authority shall forthwith cause public notice of such vacancy, or impending vacancy, to be posted on the town bulletin board for a period of not less than fourteen days. Any person who desires to be considered for appointment to said office or employment may file with the appointing authority a statement in clear and specific terms setting forth such person's qualifications for the position. No permanent appointment to fill a vacancy in an office or employment shall be effective until at least fourteen days have elapsed following such posting, and until all persons who have filed statements in application have been considered.

ARTICLE 10 TRANSITIONAL PROVISIONS

SECTION 10-1: CONTINUATION OF EXISTING LAWS

All general laws, special laws, town by-laws, town meeting votes, and rules and regulations of or pertaining to Amherst that are in force when this charter takes effect, and not specifically or by implication repealed hereby, shall continue in full force and effect until amended or repealed, or rescinded by due course of law, or until they expire by their own limitation. Section 216 of the acts of 2001 is hereby repealed.

In any case in which the provisions of this charter are found to be inconsistent with the provisions of any general or special law which would otherwise be applicable, the provisions of this charter shall be deemed to prevail. Every inconsistency between the prior law and this charter shall be decided in favor of this charter.

SECTION 10-2: CONTINUATION OF GOVERNMENT AND ADMINISTRATION

All town agencies shall continue to perform their duties until re-elected, re-appointed, or until successors to their respective positions are duly appointed or elected, or until their duties have been transferred and assumed by another town agency.

SECTION 10-3: TRANSFER OF RECORDS AND PROPERTY

All records, property and equipment whatsoever of any town agency, or part thereof, the powers and duties of which are assigned in whole or in part to another town agency, shall be transferred forthwith to such agency.

SECTION 10-4: EFFECT ON OBLIGATIONS, TAXES, ETC.

All official bonds, recognizances, obligations, contracts, and other instruments entered into or executed by or to the town before the adoption of this charter, and all taxes, assessments, fines, penalties, forfeitures, incurred or imposed, due or owing to the town, shall be enforced and collected, and all writs, prosecutions, actions and causes of action, except as

herein otherwise provided, shall continue without abatement and remain unaffected by the charter; and no legal act done by or in favor of the town shall be rendered invalid by reason of the adoption of this charter.

SECTION 10-5: TIME OF TAKING EFFECT

This charter shall take effect upon its ratification by the voters and in accordance with the following schedule:

- (a) All town officers and employees shall continue to perform their duties in the same manner and to the same extent as they have performed the same prior to the ratification by the voters of the home rule charter, but, being mindful that on the first business day in January of the year following the year the charter has been so ratified, that the executive authority will thereafter be vested in a mayor and the legislative authority will be vested in a town council.
- (b) The first election of officers under this charter shall be held on the first Tuesday following the first Monday in November, 2005 for the purpose of electing a mayor, an elector of the will of Oliver Smith, a town council, two members of the school committee and two members of the board of trustees of the public library. So much of this charter shall become effective as is necessary to conduct such election. The board of selectmen shall issue the warrants for such elections.

The two candidates for the office of town councilor-at-large who receive the highest number of votes shall be declared elected to a term of four years (expiring at the end of 2009) and the two candidates for the office of town councilor-at-large who receive the next highest number of votes shall be declared elected to a term of two years (expiring at the end of 2007).

As soon as practical following the election at which this charter is adopted the districting advisory board appointed by the board of selectmen in 2000 for the purpose of participating in the drawing of new precinct lines resulting from the federal census in 2000 (and as provided in section 1.21 of chapter 216:2001) shall (and if disbanded it shall be reconstituted by the board of selectmen and it shall), using existing precinct boundary lines and voting places, divide the town into five equal voting districts, or, as nearly equal as may be using such existing precinct lines, in accordance with applicable law. Forthwith following the filing of its report establishing the five districts to be used in electing certain members of the town council, the advisory committee shall, publicly, hold a drawing by lot at which it will be determined whether the odd or the even numbered districts will receive the four year term (expiring at the end of 2009) and, conversely, whether the odd or the even numbered districts will receive the two year term (expiring at the end of 2007). The ballots shall be prepared accordingly.

The term of office of the member of the school committee who was elected at the election at which this charter was adopted shall expire at the end of calendar year 2007. The terms of office of the two members of the school committee who were elected at the election held in the spring of 2004 shall be extended to the end of calendar year 2007. The terms of the two members of the school committee who were elected at the election held in the spring of 2003 shall expire at the end of calendar year 2005. At the town election held in November, 2005 two members shall be elected to the office of school committee member, for terms of four years (expiring at the end of calendar year 2009). Thereafter at each town election candidates shall be elected to the office of school committee member for terms of four years each to fill expiring terms.

The terms of office of the two members of the board of trustees of the public library who were elected at the election at which this charter was adopted shall expire at the end of calendar year 2007. The terms of office of the two members of the board of trustees of the public library who were elected at the election held in the spring of 2004 shall be extended to the end of calendar year 2007. The terms of the two members of the board of trustees of the public library who were elected at the election held in the spring of 2003 shall expire at the end of calendar year 2005. At the town election held in November, 2005 two members shall be elected to the office of trustee of the public library, for terms of four years (expiring at the end of calendar year 2009). At the town election held in November, 2007 four members shall be elected to the office of trustee of the public library, the three candidates receiving the highest number of votes shall be declared elected to a four year term (expiring at the end of calendar year 2011) and the candidate receiving the fourth highest number of votes shall be declared elected to a two year term (expiring at the end of calendar year 2009). Thereafter at each town election three candidates shall be elected to the office of trustee of the public library for terms of four years each.

- (c) Forthwith following the first election the persons elected as mayor and town council members shall be sworn to the faithful performance of their duties and shall take up so much of the powers and duties of their offices as are necessary to begin the process of transition from the existing form of government to the new form of government. This preparation for the transfer shall include a review by the town council members of policies and procedures to govern the conduct of the business of the town council and the adoption by it of rules by which it will conduct its business.

The person chosen as mayor shall meet as needed with the members of the board of selectmen, the school committee and the board of library trustees, and for such purpose shall be considered a member ex officio of such bodies, but without the power or authority to vote. The mayor shall have a right to meet with the town manager or any town officer, town agency or town employee not responsible to the town manager during regular business hours for the purpose of acquiring and advancing knowledge and information necessary to assume the full powers of mayor on the first business day of January in the year following the year in which the charter is adopted. The town manager shall ensure that all necessary information and assistance under the town manager's control is provided to the mayor in a timely fashion.

The town shall provide suitable offices in a public building and access to clerical services and office machines to the mayor-elect and councilors-elect to enable them to undertake and to carry out their transitional assignments.

- (d) On the first business day of January in the year following the year in which this charter is adopted the terms of office of the members of the board of selectmen, the town moderator and of the representative town meeting members shall all be terminated, and their offices abolished. The mayor, town council and school committee shall organize as provided in section 9-8. Each other elected and appointed town officer and employee shall continue to serve in the same office or position until the expiration of the term for which elected or appointed, a vacancy occurs by reason of death or resignation, or some other provision is made in accordance with the provisions of sections 4-5, 5-1 and 10-5 concerning the office or employment. The provisions of this Home Rule Charter shall become fully effective on said first business day of January in the year following the year in which the charter is adopted.
- (e) As the terms of office of the incumbent members of the Amherst Housing Authority and the Amherst Redevelopment Authority expire, or as vacancies may otherwise occur in any of such offices, successors shall be chosen in the manner provided in section five of chapter one hundred twenty-one B of the General Laws.
- (f) Until such time as another salary is established for the office of the mayor, in accordance with the procedure provided in section 3-1(c), the initial salary for the mayor of Amherst shall be fifty thousand dollars (\$50,000) annually. The initial salary for the members of the town council shall be eight thousand (\$8,000) for each councilor.
- (g) Not later than thirty days following the date of the ratification of this charter by the voters the town clerk shall give to each member of the Massachusetts House and Senate who represent any part of Amherst a copy of the vote ratifying this charter and the following petition for the enactment of a special law applicable to Amherst in the following form:

AN ACT EXCEPTING AMHERST FROM CERTAIN PROVISIONS OF THE CIVIL SERVICE LAW

Be it enacted, etc.

For the purpose of classifying positions under the civil service law and rules, Amherst, notwithstanding the provisions of a home rule charter establishing its form of government, shall continue to be governed by the provisions of section fifty-two of chapter thirty-one of the General Laws and not by the provisions of section fifty-one of said chapter thirty-one.

Nothing in this act shall be construed to affect the civil service status of any person currently covered by such law and rules.

This act shall take effect upon its passage.

The above draft is provided for guidance and general scope and may be altered by the General Court to conform to its normal practice. The board of selectmen, or the mayor, is hereby authorized to approve any change in said special law as may be proposed by the General Court.

- (h) Until such time as the mayor and town council shall provide for a different plan of assuring the integrity of elected office and to diminish the impact political contributions might have on the conduct of government, the following provision shall have the effect of a town ordinance and it may be amended, repealed or revised by the mayor and council in accordance with the provisions for ordinances in articles 2 and 3 of the home rule charter and it may be amended, repealed or revised by the voters in accordance with procedures made available for initiative and referendum in article 7 of the home rule charter.

Conflicts Based on Prior Pecuniary Benefits.

1. The acceptance or receipt by the mayor or any town councilor or member of the mayor's or that town councilor's immediate family, or an organization formed to support the candidacy of the mayor or that town councilor, of any thing or things of total value in excess of five hundred dollars (\$500) from any person, organization, or agent of such person or organization, shall create a conflict of interest with regard to the mayor's or that town councilor's vote or debate on any issue or matter coming before the town council involving a benefit to the contributing person, organization, or agent unless such interests are merely incidental to an issue or question involving the common public good.

Should a conflict of interest arise for any town councilor under this section the town councilor shall state the grounds for the conflict of interest on the record immediately prior to the debate on the issue, withdraw from the debate, and abstain from voting on the matter, notwithstanding any duty to vote provided for in the home rule charter, or otherwise. Should a conflict of interest arise for the mayor under this section the mayor shall state the grounds for the conflict of interest on the record immediately prior to the debate on the issue, withdraw from the debate, and relinquish the chair during consideration of that matter.

In the event a quorum cannot be obtained because of any issue or matter to be acted on by the town council because of abstentions pursuant to this section, any abstaining town councilor may vote as long as that councilor has disclosed the nature of the conflicting interest, including the amount of financial interest, the purpose and duration of any employment provided or services rendered and compensation therefore, and such other information as may be necessary to describe the interest.

Any town councilor may challenge the existence of a conflict of interest pursuant to this section prior to a town council vote, but not thereafter. In the event such challenge is raised, the challenge shall be decided by a majority vote of the members of the town council with no alleged conflict, and such determination shall be deemed to be final and conclusive.

2. For purposes of this ordinance, the following terms shall be defined as:

"thing of value" means money, employment, goods, services, or objects with any intrinsic value, including but not limited to, campaign contributions, loans, offsets to expenditures, contributions in kind, and independent expenditures by any person or organization on behalf of the candidacy of the mayor or of a town councilor, provided that such thing of value was received during the mayor's or town councilor's current term of office or anytime within six (6) months prior to the commencement of the mayor's or town councilor's current term of office.

"immediate family" means the parents, children, brothers and sisters, and the spouse of the mayor, any town councilor, or any candidate for mayor or town councilor.

- (i) Not later than thirty days following the election at which this charter is adopted the select board shall appoint seven persons to be a committee to begin a review of the town by-laws for the purpose of preparing such revisions and amendments as may be needed or necessary to bring them into conformity with the provisions of this charter and to fully implement the provisions of this charter. If possible, at least two of the persons appointed to the committee shall have been members of the Amherst Charter Commission. The committee shall submit a report, with recommendations, to the mayor and council forthwith following the election held in the year in which this charter is adopted. The review shall be conducted under the supervision of the town counsel, or, by special counsel appointed for that express purpose.
- (j) Forthwith following the election held in the year in which this charter is adopted the mayor-elect shall appoint seven persons to be a committee to review the town by-laws for the purpose of preparing such revisions and amendments as may be needed or necessary to bring them into conformity with the provisions of this charter and to fully implement the provisions of this charter. If possible, two of the persons appointed to the committee shall have been members of the Amherst Charter Commission. The committee appointed by the mayor may, but need not, consist of the same persons who served on the committee appointed by the select board pursuant to paragraph i, above. The committee shall submit a report, with recommendations, within one year following its creation and may submit interim reports, with recommendations, at any time. The review shall be conducted under the supervision of the town attorney, or by special counsel appointed for that express purpose.

Not later than the last day of June in the second year following the year in which the charter is adopted (June 30, 2005) the council shall adopt a codification of ordinances containing all of the pre-existing by-laws of the town which are appropriate for continuation as ordinances and such new ordinances as may be necessary or desirable. The codification may be adopted by reference, by enacting an ordinance referring to a document in existence, and for the convenience of the voters with certified copies on file in the office of the town clerk and at the main branch of the public library.

All proposed ordinances introduced after the approval of the code shall be adopted as amendments, additions or deletions to the code and by reference thereto.

- (k) All multiple member bodies in existence when this charter is adopted shall continue in existence with the same make-up and the same powers, duties, authorities and responsibilities until some specific action is taken by the town manager or the town council in accordance with the provisions of the charter to alter any such multiple member bodies.
- (l) Notwithstanding any provision of this charter which might appear to the contrary it is recognized that it will not be possible for the first person elected as mayor to begin at once to exercise all of the powers, duties and responsibilities

which are assigned to the office of the mayor. It is recognized that it is in the best interest of the town of Amherst that such assumption be on a gradual basis as the mayor, town council and other municipal officials are able to adopt ordinances and other regulations as are necessary to implement all of the provisions of the charter.

- (m) The system currently in place and in use by the select board for the purpose of evaluating and grading the job performance of the town manager shall continue to be used by the mayor and town council to evaluate and grade the job performance of the town manager until such time as the system is changed by the mayor and town council and after due notice of any such change to the town manager. If a vacancy shall occur in the office of town manager during the period between when the charter is adopted and the assumption of office by the mayor and council, no permanent action shall be taken by the board of selectmen to fill the position of town manager.
- (n) The members of the finance committee (established pursuant to section 2.23 of chapter 216:2001) in office at the time the charter takes full effect (in January, 2006) shall continue to serve as the initial members of the citizens' advisory committee on finance until the terms for which they were appointed expire, or vacancies otherwise occur, and their successors shall be appointed by the president of the town council.
- (o) During the first full year of its first term the town council shall conduct, or cause to be conducted, an in-depth study of the system of voting referred to as instant run-off voting wherein candidates for office are ranked by voters in descending order of preference to fill the position, or positions, to be elected. The study shall seek to determine whether all elections for local office should be conducted using this method, or whether only some offices should be elected by this method, or if the town should use some other method for filling offices by election. The final report shall be filed with the town clerk and sufficient copies made available for distribution to such registered voters as may request copies at the office of the town clerk. The report shall be filed not later than the first day of March in the second year of the term of office of the first town council elected under this charter.
- (p) The mayor and town council shall have authority to adopt measures which clarify, confirm or extend any of the transitional provisions in order that such transition may be made in the most expeditious and least contentious manner possible.